

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 140 of 1999

With

CIVIL APPLICATION NO. 67 OF 1999

WITH

CIVIL APPLICATION NO. 1832 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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POPATBHAI SHAKRABHAI PATEL

Versus

COLLECTOR AHMEDABAD

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Appearance:

MR SANJAY M AMIN for Petitioner  
GOVERNMENT PLEADER for Respondent No. 1  
HL PATEL ADVOCATES for Respondent No. 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 16/04/99

ORAL JUDGEMENT

These three matters are proposed to be disposed of by a common judgement.

2. It is proposed to take up the Special Civil Application No. 140 of 1999. By order dated 22.1.99 this Court directed that the main petition be listed for final hearing on 10.2.99. The respondents were given opportunity to file reply to this Special Civil Application but till date no reply or counter affidavit has been filed. In view of this order and further in view of urgency to hear the matter finally in as much as the election is going to be held on Sunday 18.4.99, Learned Counsel for the parties were heard on this Special Civil Application. They were also heard on the pending two civil applications.

3. The prayer of the petitioner in this writ petition under article 226 of the Constituion of India is to quash the impugned orders dated 5.1.99 Annexure D and 1.12.98 Annexure C to the writ petition. From Annexure A, a letter dated 15.9.98, the petitioner was informed that he was required to be present personally on 6.10.98 at 12:00 a.m. for hearing on the infringement of the Rules. This notice was issued by the District Collector of Ahmedabad. It was issued against four persons. The person at Sr.No. 4 is the petitioner in this petition. This was obviously a vague communication. The infringements of the rules was not notified or communicated through this letter. Thus the petitioner was unaware of the violations or infringements which were alleged against him. In the body in this letter, it is mentioned that interalia the petitioner was not present on the dates mentioned in the said letter i.e. letter dated 15.9.98 of the Manager, Nagar Panchayat. Neither the copy of the said letter was annexed with this Annexure nor the dates on which the petitioner remained absent from the meetings of the Panchayat were disclosed in this letter. No other show cause notice was given to the petitioner. The petitioner appeared on the fixed date i.e. on 6.10.98 and submitted his reply Annexure B to the Collector. In Para 5 of this reply he made a request seeking certain clarifications and for opportunity of hearing. The ambiguity in the letter Annexure A was not clarified nor any reply was given to the petitioner. The Collector by his order dated 1.11.98 Annexure C gave semblance of personal hearing to the petitioner and ultimately found that on 3.3.98, 11.3.98, 29.4.98 and 29.6.98 the petitioner remained absent in the meetings of the Panchayat held on these dated. Accordingly he passed the impugned order removing the petitioner from the membership of the Panchayat for the obvious reason that he remained absent in four consecutive months when meetings of the Panchayat were

held. Feeling aggrieved, the petitioner preferred a revision to the State Government. The State Government confirmed the order of the Collector and observed that there was no necessity to issue show cause notice and the revision of the petitioner was dismissed. Feeling aggrieved with these two orders the petitioner has approached this Court through this writ petition.

3. Learned Counsel representing the Nagar Panchayat has drawn my attention to Section 39 of the Gujarat Municipalities Act, 1963 and has argued that on account of absence of the petitioner in four consecutive months from the meetings of the Panchayat a vacancy arose in the membership and as such the election is rightly going to be held and the two orders do not suffer from any infirmity. However, I do not find any merit in this contention. Section 39 (1) of the Act provides that:-

Any Councillor who during his term of office  
absents himself for more than three consecutive  
months from the Municipal borough unless leave  
not exceeding four months so to absent himself  
has been granted by the municipality shall cease  
to be a Councillor and his office shall be  
vacant.

Section 39 (1) (b) of the Act is however attracted in the instant case which provides as under:-

"Any Councillor who during his term of office  
absents himself for four consecutive months from  
the meetings of the municipality without the  
leave of the municipality shall cease to be a  
councillor and his office shall be vacant."

4. This provision is not automatic. It has to be established to the satisfaction of the Collector that the Councillor was actually absent for four consecutive months from the meetings of the Municipality without leave of the Municipality. Sub-Section 2 of Section 39 further provides that:-

In every case, the authority competent to decide  
whether a vacancy has or has not occurred under  
this section shall be the Collector. The  
Collector may give his decision either on an  
application made to him by any person or on his  
own motion after giving the councillor a  
reasonable opportunity of being heard.

The scheme of the section, therefore is that the

Collector can initiate suo moto action in such cases and can also act on the application made to him by any person. Further requirement of the section is that before passing the order the Collector shall afford reasonable opportunity to the Councillor of being heard. This reasonable opportunity of hearing to the petitioner was not given in the instant case. Show Cause Notice was not given to the petitioner. If the letter Annexure A is considered to be the show cause notice then it suffers from the vice of vagueness because in the first place infringements of the rules were not mentioned. Secondly the date on which the petitioner remained absent for four consecutive meetings was also not notified in this letter. The petitioner was thus proceeding in darkness. He applied to the Collector on the date fixed for proper details but no details regarding the dates of absence were furnished by the Collector. The dates were disclosed only for the first time in the order of the Collector.

5. Learned Counsel for the petitioner has mentioned and alleged that out of the aforesaid dates on 29.4.98 the petitioner had to remain out of station for attending the death ceremony of some of his relatives and for that prior application Annexure E was sent by post to the Municipality on 21.4.98. It has been argued by the Learned Counsel for the petitioner that no reply was given by the Municipality either accepting or rejecting this application. If any order rejecting this application was not communicated to the petitioner within a period of seven days he was justified in presuming and believing that his application was granted and if in these circumstances he remained absent, it will be deemed to be absence with implied permission of the Municipality. Consequently on facts for four consecutive months absence of the petitioner on four dates is not established from the material on record. If the petitioner would have been made known about these dates by the Collector this fact could have been established by the petitioner in the course of personal hearing that his absence in the meeting dated 29.4.98 was with implied permission. Since this was not done, the principles of natural justice as contained in Section 39(2) were certainly violated. A reasonable opportunity of hearing contemplated in Section 39(2) of the Act includes giving a letter or show cause notice making known to the Councillor what were the allegations against him and why he was proposed to be removed and why it was proposed to decide that a vacancy in his place has arisen. It further includes an opportunity to the petitioner or to the Councillor to show cause as to why he was absent and

also to show cause whether he has violated any provisions of the Rules or not. That was not done in the instant case. Thus the order of the Collector stands vitiated for non observance of the principles of natural justice.

6. So far as the revisional order is concerned, it is nothing but an order without application of mind. The Revisional Authority was of the opinion that because the petitioner was required to be present before the Collector on 6.10.98 for personal hearing no show cause notice was required to be given. This view of the Revisional Authority is totally against the principles of natural justice. In the absence of show cause notice how the petitioner could explain his stand either before the Collector or before the Revisional Authority. In view of the above discussions, it is manifest that the order of the Collector Annexure C dated 1.12.98 and the order of the State Government dated 5.1.99 as contained in Annexure D cannot be sustained being violative of the principles of natural justice. These orders have therefore to be quashed. The result is that the writ petition succeeds and is hereby allowed. The orders dated 1.12.98 Annexure C and 5.1.99 Annexure D to the writ petition are hereby quashed. No order as to costs. It is however clarified before parting with this judgement that this order will have prospective effect and not retrospective effect, hence other proceedings conducted by the Nagar Panchayat in the absence of the petitioner will not be invalidated.

7. Since the main petition has been allowed and the impugned orders have been quashed the Civil Application No. 67/99 does not survive and is rejected as infructuous. Similarly, Civil Application No. 1832/99 is also rendered infructuous and is rejected as such. Direct Service is permitted.

(D.C.Srivastava, J)

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